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Considering however that respondent judge has no record of previous administrative sanctions, the Court's attention has been drawn, in applying the corresponding penalty, to the recommendation of the OCA that respondent be reprimanded only for his failure to seasonably decide Criminal Cases Nos. 7840-42. Given the facts of this matter, the Court concedes that the OCA's recommended penalty is in order.

**WHEREFORE**, JUDGE LUCILO C. RALLOS is found *LIABLE* for undue delay in the conduct of judicial proceedings by his failure to decide Criminal Cases Nos. 7840-42 within the prescribed period therefor, and he is hereby *REPRIMANDED* with a warning that a repetition of the same or a similar offense shall warrant a more severe penalty.

**SO ORDERED.**

*Bellosillo (Chairman), Mendoza, Austria-Martinez,* and *Callejo, Sr., JJ.*, concur.

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**EN BANC**

[G.R. Nos. 120625-29. January 28, 2003]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **CARLITO MARAHAY *y* MORACA,** *accused-appellant.*

**SYNOPSIS**

Appellant was charged with four counts of rape committed against his daughter Mylene and one charge of rape against his other daughter, Belinda. He admitted having sexually assaulted Mylene but denied the other charges against him which were allegedly concocted by his wife.

On appeal, the Supreme Court held the appellant liable for one count of rape against Mylene and one count of rape against Belinda. The Court held that the prosecution failed to satisfy

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the requirement of proof beyond reasonable doubt of the other rape charges. The penalty for each count of simple rape should only be *reclusion perpetua,* for while the father-daughter relationship of appellant and the victims, Mylene and Belinda, remains undisputed, the minority of the victims, though alleged, was not satisfactorily established. The Court gave credence to Belinda's consistent, trustworthy and candid testimony which is sufficient to warrant a judgment of conviction. Noting that Mylene was in tears while narrating in court her father's monstrous acts, the Court also held that the appellant exercised moral ascendancy over his daughter and that it is against human nature for a girl to fabricate a story that would expose herself as well as her family to a lifetime of dishonor, especially when her charge could mean the death of her own father.

**SYLLABUS**

**1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF A YOUNG GIRL THAT SHE HAS BEEN SEXUALLY VIOLATED BY HER FATHER IS CREDIBLE; CASE AT BAR.**— Mylene's testimony unmistakably shows that she struggled to repel her father's sexual advances but his strength proved too much for her. Obviously, in cases of incestuous rape, the perpetrator generally takes full advantage of his blood relationship, ascendancy, and influence over his victim, both to commit the sexual assault and to intimidate the victim into silence. The instant case is no exception. There is no question that accused-appellant exercised moral ascendancy over his daughter. Mylene at that time could not rouse her sister from sleep. Mylene also admitted that after accused-appellant raped her, she could not escape from the farmhouse as she was so frightened of him. In fact, she could not tell her mother of her ordeal, mindful of the serious threats to their lives. It was only several days later that she mustered enough courage to inform her mother of what her father did to her. The records show that Mylene was in tears while narrating in court her father's monstrous acts. Indeed, when the victim says that she has been violated, she says in effect all that is necessary to show that rape has been committed. No woman, especially one of tender age, would concoct a story of defloration, allow an examination of her private parts and thereafter expose herself to a public trial, if she were not motivated solely by the desire to have the culprit apprehended and punished. It is against

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human nature for a girl to fabricate a story that would expose herself as well as her family to a lifetime of dishonor, especially when her charge could mean the death of her own father.

**2. ID.; ID.; PROOF BEYOND REASONABLE DOUBT; EACH RAPE CHARGE MUST BE PROVED BEYOND REASONABLE DOUBT; CASE AT BAR.**— We stress that every charge of rape is a separate and distinct crime and each must be proved beyond reasonable doubt. In Criminal Cases Nos. 1965 and 1969, the allegations in the informations declared that Mylene was raped on August 25, 1994, at 7:00 o'clock in the evening and at 3:00 o'clock in the morning. However, Mylene's testimony regarding the commission of these two other felonies failed to satisfy the requirement of proof beyond reasonable doubt that would justify the conviction of accused-appellant. . . Thus, when asked what occurred on the evening of August 25, 1994, Mylene merely replied that her father "did the same thing" to her. When prodded to specify the acts done to her, she stated that her father "used her." No other detail was evoked from her to show the attendant elements that constitute rape, the crime charged. Such bare statements cannot suffice to establish accused-appellant's guilt with the required quantum of evidence. . . From the foregoing findings, accused-appellant can only be convicted of one count of rape against Mylene Marahay, that which has been duly alleged and proved.

**3. ID.; ID.; CREDIBILITY OF WITNESSES; CONSISTENT, TRUSTWORTHY AND CANDID TESTIMONY MAY BE THE BASIS OF CONVICTION; CASE AT BAR.**— We give credence to Belinda's consistent, trustworthy and candid testimony. It is sufficient to warrant a judgment of conviction. Since her testimony meets the test of credibility, the accused-appellant may be convicted on the basis thereof.

**4. CRIMINAL LAW; REVISED PENAL CODE; ARTICLE 335 THEREOF, AS AMENDED BY R.A. NO. 7659; QUALIFYING CIRCUMSTANCES OF RELATIONSHIP AND MINORITY MUST BE ALLEGED AND PROVED TO IMPOSE THE DEATH PENALTY; SIMPLE RAPE COMMITTED IN CASE AT BAR.**— We have previously declared that the special circumstances introduced by RA No. 7659, including the above-mentioned circumstance, that sanction the automatic imposition of the death penalty, partake of the nature of qualifying circumstances. These circumstances increase the penalty for rape by one degree. However, both the circumstances of minority and relationship

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must be alleged in the information and proven during trial to warrant the imposition of the death penalty. While the father-daughter relationship of accused-appellant and the victims, Mylene and Belinda, remains undisputed, the minority of the victims, though alleged, was not satisfactorily established. It is the burden of the prosecution to prove with certainty the fact that the victim was below 18 years of age when the rape was committed in order to justify the imposition of the death penalty. . . Although the defense does not contest the age of the victim, it is still essential that the prosecution present independent proof thereof, pursuant to No. 5 of said guidelines. As a matter of fact, the minority of the victim must be proved with equal certainty and clearness as the crime itself. Under Section 44, Rule 130 of the Rules on Evidence, a birth certificate is the best evidence of a person's date of birth. In the instant case, the prosecution did not present the certificates of live birth of both Mylene and Belinda or other similar authentic documents to prove their ages. Not even the victims' mother or the victims themselves, or any other relative qualified to testify on matters respecting pedigree, were presented by the prosecution to establish the victims' ages at the time the crimes were committed. Such failure of the prosecution to discharge its burden constrains this Court to hold that the qualifying circumstance of minority cannot be appreciated in these cases. In sum, accused-appellant should only be convicted of two counts of simple rape. The penalty for each count should only be *reclusion perpetua*, not death.

**5. ID.; ID.; ID.; DAMAGES AWARDED IN RAPE CASES; CASE AT BAR.**— As to damages, it must be stressed that moral damages are awarded in rape cases without need of proof other than the fact of the rape itself because it is assumed that the victim has suffered moral injuries entitling her to such an award. We find the trial court's award of ₱50,000.00 as moral damages to each victim in each case to be in order. The trial court erred in not awarding civil indemnity to the victims in each case, the same being mandatory upon the finding of the fact of rape. This Court awards each of the victims the sum of ₱50,000.00 as civil indemnity. The trial court awarded ₱30,000.00 as exemplary damages. In line with our ruling in *People vs. Catubig*, wherein the exemplary damages of ₱25,000.00 was awarded because the aggravating circumstance of relationship in the commission of rape was duly alleged and established, we reduce the trial court's award to ₱25,000.00.

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**APPEARANCES OF COUNSEL**

*The Solicitor General* for plaintiff-appellee.
*Public Attorney's Office* for accused-appellant.

**D E C I S I O N**

**SANDOVAL-GUTIERREZ, *J.*:**

For automatic review is the Joint Decision of the Regional Trial Court (RTC), Branch 19, Catarman, Northern Samar, in Criminal Cases Nos. 1964, 1965, 1967, 1968, and 1969 convicting Carlito Marahay *y* Moraca, accused-appellant, of five counts of rape and sentencing him to suffer death for each count, and to pay each of the victims, Belinda and Mylene Marahay, the amounts of ₱50,000.00 as moral damages and ₱30,000.00 as exemplary damages, in each case.

Initially, on November 24, 1994, Provincial Prosecutor Romeo M. Resuello of Catarman, Northern Samar, filed with the RTC two Informations charging accused-appellant with rape, thus:

Criminal Case No. 1964

"That on or about the 24th day of August, 1994, at 7:00 o'clock in the evening more or less in Sitio Pangi, Brgy. Bantayan, Municipality of San Roque, Province of Northern Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with lewd design, and with force, intimidation and threats to kill, did then and there, willfully, unlawfully and feloniously embrace, kiss and finger BELINDA MARAHAY, a 12-year old girl and own daughter of accused, after which said accused succeeded in having sexual intercourse with his daughter Belinda against her will and consent.

"CONTRARY TO LAW."[1]

Criminal Case No. 1965

"That on or about the 25th day of August, 1994, at 7:00 o'clock in the evening more or less, in Sitio Pangi, Brgy. Bantayan, Municipality of San Roque, Province of Northern Samar, Philippines, and within

[1] Records of Criminal Case No. 1964, p. 4.

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the jurisdiction of this Honorable Court, the above-named accused with lewd design, and with force, intimidation and threats to kill, did then and there, willfully, unlawfully and feloniously embrace, kiss and hold the private parts of MYLENE MARAHAY, a 14-year old girl and own daughter of accused, after which said accused succeeded twice in having sexual intercourse with his daughter Mylene, against her will and consent.

"CONTRARY TO LAW."[2]

Subsequently, or on November 29, 1994, Amalia P. Marahay, mother of Belinda and Mylene, filed with the same court three amended complaints, charging accused-appellant with an additional three counts of rape which read:

Criminal Case No. 1967

"That on or about the 26th day of August, 1994, at more or less 3:00 o'clock in the morning at Sitio Pangi, Brgy. Bantayan, Municipality of San Roque, Province of Northern Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there, willfully, unlawfully and feloniously with force and intimidation, succeeded in having sexual intercourse with his daughter MYLENE MARAHAY *Y* PRUDENCIO against her will and consent.

"CONTRARY TO LAW."[3]

Criminal Case No. 1968

"That on or about the 24th day of August, 1994, at more or less 7:00 o'clock in the evening at Sitio Pangi, Brgy. Bantayan, San Roque, Northern Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there, willfully, unlawfully and feloniously, with force and intimidation, succeeded in having sexual intercourse with his daughter MYLENE MARAHAY *Y* PRUDENCIO against her will and consent.

"CONTRARY TO LAW."[4]

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[2] Records of Criminal Case No. 1965, p. 1.

[3] *Id.*, p. 2.

[4] Records of Criminal Case No. 1968, p. 2.

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Criminal Case No. 1969

"That on or about the 25th day of August, 1994, at more or less 3:00 o'clock in the morning at Sitio Pangi, Brgy. Bantayan, San Roque, Northern Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there, willfully, unlawfully and feloniously with force and intimidation, succeeded in having sexual intercourse with his daughter MYLENE MARAHAY *Y* PRUDENCIO against the will and consent of the latter.

"CONTRARY TO LAW."[5]

When arraigned on December 2, 1994, accused-appellant Carlito Marahay pleaded not guilty to all five charges of rape.[6]

During the pre-trial, the prosecution and the defense stipulated that accused-appellant and complainant Amalia Marahay are legally married and that Mylene and Belinda Marahay are their legitimate children.[7] Thereafter, joint trial of the cases ensued.

The Solicitor General, in the appellee's brief, summarized the theory of the prosecution as follows:

"This is a case of rape by the father of his fourteen-year old and twelve-year old daughters.

"MYLENE MARAHAY is a fourteen-year old girl and a high school freshman while BELINDA MARAHAY is aged twelve and a fourth-grader. Mylene and Belinda are the eldest and second eldest, respectively, of six (6) siblings. They have three (3) sisters aged ten, eight, and four and a six-year old brother. Their parents are Amalia and Carlito Marahay, the latter being the appellant himself. Mylene and Belinda live with their family in a house in Barangay Bantayan, Municipality of San Roque, Province of Northern Samar (TSN, December 5, 1994, pp. 2 and 11; December 6, 1994, pp. 8–9).

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[5] Records of Criminal Case No. 1969, p. 2.

[6] Certificate of Arraignment, Records of Criminal Case No. 1964, p 28; Certificate of Arraignment, Records of Criminal Case No. 1967, p. 5; Certificate of Arraignment, Records of Criminal Case No. 1968, p. 6; Certificate of Arraignment, Records of Criminal Case No. 1969, p. 5.

[7] Pre-trial Order, Records of Criminal Case No. 1964, p. 36.

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"On August 24, 1994, Mylene and Belinda accompanied appellant to their farm in Sitio Pangi where they were to make *copra* (TSN, December 6, 1994, pp. 7–9). At the farm, they had supper at 6:30 in the evening and went to sleep at 7:00 o'clock. They lay on the floor with the appellant between Mylene and Belinda (TSN, December 5, 1994, p. 12). Mylene awoke to find the appellant pinching her. He placed himself on top of Mylene, then kissed and embraced her while removing her shorts and panty (*Ibid.*, pp. 12–13). Appellant then exposed his penis from his brief and inserted it into Mylene's organ causing her to suffer intense pain. He continued in that position until he ejaculated on the mat (*Ibid.*, pp. 13–15). He again placed his organ against her vagina but Mylene started to kick appellant while crying at the same time. Belinda saw what was happening and cried (*Ibid.*, p. 15). Appellant turned and placed himself on top of her. He disrobed Belinda in the same manner as he did with Mylene but could only penetrate her slightly as Belinda kept on crying (TSN, December 6, 1994, pp. 5–6). So he inserted his pointing finger in her organ and made a push and pull movement with it (*Ibid.*, pp. 6–7). He again placed his organ inside her vagina but then pulled it out as she jerked backward in pain and cried (*Ibid.*, pp. 7–8). All this time appellant was pinning her arms against the floor and threatening to kill her (*Ibid.*, p. 8). Nearby, Mylene just lay and cried. She could not sleep right away because of what happened (TSN, December 5, 1994, p. 16). At about 3:00 o'clock of the following morning, Mylene was again sexually assaulted by appellant (*Ibid.*, p. 19). Again that evening, appellant had sexual intercourse twice with Mylene (*Ibid.*, pp. 19–20). Scared that they would be killed by appellant, the girls kept to themselves the ordeal they suffered (*Ibid.*, p. 20). Meanwhile, appellant continued molesting Mylene everytime he saw her alone in the kitchen by touching and fondling her breast. Because of this, Mylene informed her mother Amalia of what appellant did to them at the farm (*Ibid.*, p. 21).

"When Belinda was examined by the municipal health officer of San Roque, Northern Samar in the person of Dr. Warren Octadoy, she was described as having a healed laceration of the hymen located at the eleven o'clock position which may be due to sexual intercourse, among other causes (TSN, December 5, 1994, pp. 2–6). In the case of Mylene, there were noted healed hymenal lacerations located at the four, six and eight o'clock positions consistent with the insertion of a penis, according to Dr. Lydia Quilatan, acting assistant provincial

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health officer of the Northern Samar Provincial Hospital (TSN, December 6, 1994, pp. 10–14)."[8]

The defense presented accused-appellant as its sole witness. He testified that his wife Amalia fabricated the rape charges against him. She constantly reproached him for not being rich and for her inability to continue working, being married to him. Their marriage is characteristically unstable due to her habitual drinking and her jealous fits. In 1982, they separated. In 1992, she reconciled with him so that he would continue to support their children. They all reside in Barangay Bantayan, San Roque, Northern Samar.[9]

On August 24, 1994, accused-appellant asked his wife to accompany him to Sitio Pangi to harvest *copra*. She refused, suggesting that he bring his daughters instead. Hence, Mylene and Belinda went with him to Sitio Pangi and stayed at a farmhouse for the night. While they were lying down, his daughter, Mylene, informed him that his wife has a paramour. Suddenly, he felt that his "mind became confused" and "the devil possessed him." He claimed he "forgot all around him" and then he sexually assaulted her. Mylene said nothing and did not resist him. Accused-appellant further claimed that when they had sexual intercourse that night, "the devil possessed both of them." The next day, or on August 25, 1994, they returned to their house in Barangay Bantayan.[10]

Accused-appellant denied having any sexual contact with Mylene anytime thereafter since he was bothered by his conscience. He asserted that the three additional indictments of rape allegedly committed by him against Mylene were filed by his wife in order to fortify the case against him.[11]

He also denied touching or raping his other daughter, Belinda, and reiterated that such charge was concocted by his wife.[12]

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[8] *Rollo*, pp. 108–111.

[9] TSN, December 7, 1994, pp. 28–30.

[10] *Id.*, pp. 30–42.

[11] *Id.*, p. 32.

[12] *Id.*, pp. 28–29.

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On January 11, 1995, the trial court rendered its Joint Decision,[13] the dispositive portion of which reads:

"WHEREFORE, the Court finds Carlito Marahay *y* Moraca GUILTY beyond reasonable doubt of the crimes of rape, defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659 as indicated in the specifications and is hereby sentenced as follows:

"In Criminal Case No. C-1964, to suffer the extreme penalty of death and indemnify Belinda Marahay by way of moral and exemplary damages in the amount of ₱50,000.00 and ₱30,000.00, respectively;

"In each Criminal Cases Nos. C-1965, C-1967, C-1968 and C-1969, to suffer the extreme penalty of death and to indemnify Mylene Marahay in the amounts of ₱50,000.00 and ₱30,000.00 as moral and exemplary damages, respectively.

"The accused shall also pay the costs hereof.

"SO ORDERED."[14]

Accused-appellant, in his brief, ascribes to the trial court the following errors:

". . . IN CONVICTING THE ACCUSED FOR RAPE IN CRIMINAL CASE NO. 1964, EVEN IF THE EVIDENCE RELATES TO ANOTHER CRIME.

". . . IN CONVICTING THE ACCUSED IN CRIMINAL CASES NOS. 1965, 1967 AND 1969 DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.

". . . IN CONVICTING THE ACCUSED IN CRIM. CASE NO. 1968 DESPITE THE ABSENCE OF THE ELEMENTS OF THE CRIME.

". . . IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONIES OF MYLENE MARAHAY AND BELINDA MARAHAY DESPITE A SHOWING THAT THEY WERE COACHED OR INFLUENCED WITNESSES."[15]

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[13] Penned by Judge Cesar R. Cinco, *Rollo*, pp. 26–39.

[14] *Rollo*, p. 39.

[15] Appellant's Brief, *id.*, pp. 56–57.

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Article 335 of the Revised Penal Code, as amended, defines the crime of rape, as follows:

"Article 335. *When and how rape is committed.* — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age or is demented."

In determining the guilt or innocence of the accused in rape cases, this Court is guided by three principles: (a) an accusation of rape can be made with facility; it is difficult for the complainant to prove but more difficult for the accused, though innocent, to disprove; (b) in view of the intrinsic nature of the crime of rape where only two persons are involved, the testimony of the complainant must be scrutinized with extreme caution; and (c) the evidence for the prosecution must stand and fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[16]

To recall, Criminal Cases Nos. 1965, 1967, 1968 and 1969 refer to four charges of rape committed by accused-appellant against his daughter, Mylene Marahay. The other criminal case (Criminal Case No. 1964) involves accused-appellant's sexual assault on his other daughter, Belinda Marahay.

With regard to Criminal Case No. 1968, alleged to be the first rape committed by accused-appellant on August 24, 1994, Mylene testified as follows:

"Q: That evening of August 24, 1994, can you tell us of any unusual incident that happened, if any?
A: I noticed that my Papa was pinching me, and then he went on top of me.

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[16] *People vs. Amante*, G.R. Nos. 149414–15, November 18, 2002; *People vs. Echegaray*, 257 SCRA 561, 570 (1996).

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(Court)
Q: Where were you being pinched by your father?
A: On my arm and on my body.

Q: Which part of your body?
A: Toward my left side.

Q: How many times were you pinched by your father?
A: I don't know how many times he had pinched me because when I was awakened he was already pinching me.

Q: And when you were awakened, you noticed that your father was already on top of you?
A: When I was awakened, that was the time when he went on top of me.

Proceed.

(Fiscal)
Q: In that particular evening, August 24, 1992, what particularly were you wearing when you went to bed?
A: Dress, shorts and panty.

Q: How about your father, did you notice what was his clothes when he was on top of you?
A: During the day time he was wearing long pants but in the evening he was only wearing short pants.

Q: When he was on top of you that evening of August 24, 1994, what did your father actually do when he was already on top of you?
A: When he placed himself on top of me he kissed me, embraced me and then took off my panty.

Q: When your father kissed, embraced you and took off your panty, what did you do, if any?
A: I struggled by moving but I could not release myself because he was strong.

Q: And after your panty was removed. . . How was your panty removed by your father?
A: He used his hand to take off my panty up to my knee and from there he just kicked it off from myself by using his foot.

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Q: How about your short pants?
A: My short pants and panty were taken off together.

Q: In that manner which you described?
A: Yes, sir.

Q: And when your short pants and panty were already taken off by your father, what did he do next, if any?
A: He placed his penis in my vagina.

Q: How could it be when according to you he was wearing his short pants that evening? What did he do with his short pants?
A: He just placed outside his penis. He just exposed his penis from his shorts.

(Court)
Q: Did he not take off his short pants?
A: He took off his shorts and then he just took off. . . . He just exposed his penis from his brief.

Q: And when his penis was exposed out from his brief what did he do with it?
A: He placed it inside my vagina, or inserted inside my vagina.

Q: And while he was inserting his penis into your vagina you did not resist?
A: I was moving but I could not extricate myself because he was strong.

x x x x x x x x x

(Fiscal)
Q: When you noticed that the penis of your father was already inside your female organ, what did he do with it?
A: He inserted it deep inside.

Q: And once it was deep inside your vagina, what did he do next?
A: He went on pumping or push and pull movement of his body.

Q: For how long did that push and pull take place?
A: I don't know because I could not see he was just there making push and pull his body.

Q: Did you notice any ejaculation in that movement?
A: I just don't know because after he went on push and pull movement he pulled his penis out and there was some whitish substance on the mat.

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Q: In your reproductive organ did you notice if there was fluid?
A: I just don't know because he pulled his penis out and placed it on the mat and that was where the fluid came out already.

(Court)
Q: How did you feel when he inserted his male organ to your female organ?
A: It was painful.

Q: And because it was painful what did you do? It was a feeling of like what?
A: Extreme pain. (witness is teary eyed while testifying)

Q: Did you notice something hot, the fluid flowing into your body from the penis?
A: Yes, sir."[17]

As can be gleaned from the above statements, Mylene clearly described how accused-appellant had carnal knowledge of her and what she felt during those harrowing moments. Her positive and categorical testimony deserves credence.

Corroborating Mylene's testimony is the accused-appellant himself, who admitted that he sexually assaulted his daughter Mylene while she laid beside him inside the farmhouse. He blamed "the devil" who "possessed" him as he took off the shorts and panty of his eldest daughter. He "forgot all around" him as he inserted his exposed penis into her vagina. He satisfied his lust on his own flesh and blood. He claims, however, that he committed this sexual atrocity only once.

Accused-appellant harps on the fact that the element of force or intimidation was not established. He contends that his daughter did not resist his sexual assault. Nor did she seek help from her sister Belinda, then sleeping nearby.

We are not persuaded. Mylene's testimony unmistakably shows that she struggled to repel her father's sexual advances but his strength proved too much for her. Obviously, in cases

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[17] TSN, December 5, 1994, pp. 12–15.

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of incestuous rape, the perpetrator generally takes full advantage of his blood relationship, ascendancy, and influence over his victim, both to commit the sexual assault and to intimidate the victim into silence.[18] The instant case is no exception. There is no question that accused-appellant exercised moral ascendancy over his daughter. Mylene at that time could not rouse her sister from sleep. Mylene also admitted that after accused-appellant raped her, she could not escape from the farmhouse as she was so frightened of him. In fact, she could not tell her mother of her ordeal, mindful of the serious threats to their lives.[19] It was only several days later that she mustered enough courage to inform her mother of what her father did to her.

The records show that Mylene was in tears while narrating in court her father's monstrous acts.[20] Indeed, when the victim says that she has been violated, she says in effect all that is necessary to show that rape has been committed.[21] No woman, especially one of tender age, would concoct a story of defloration, allow an examination of her private parts and thereafter expose herself to a public trial, if she were not motivated solely by the desire to have the culprit apprehended and punished.[22] It is against human nature for a girl to fabricate a story that would expose herself as well as her family to a lifetime of dishonor, especially when her charge could mean the death of her own father.[23]

We disagree, however, with the trial court's conclusion that accused-appellant must likewise be liable for the three other

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[18] *People vs. Alba*, 305 SCRA 811, 822 (1999), citing *People vs. Melivo*, 253 SCRA 347, 356–358(1996).

[19] TSN, December 5, 1994, p. 21.

[20] *Id.*, pp. 14–15.

[21] *People vs. Dumaguing*, 340 SCRA 701, 709–710 (2000); *People vs. Carullo*, 311 SCRA 680, 689(1999).

[22] *People vs. Nuñez*, 310 SCRA 168, 179 (1999); *People vs. Escober*, 281 SCRA 498, 507 (1997).

[23] *People vs. Ebio*, G.R. No. 147750, October 14, 2002.

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counts of rape against Mylene. We stress that every charge of rape is a separate and distinct crime and each must be proved beyond reasonable doubt.[24]

In Criminal Cases Nos. 1965 and 1969, the allegations in the informations declared that Mylene was raped on August 25, 1994, at 7:00 o'clock in the evening and at 3:00 o'clock in the morning. However, Mylene's testimony regarding the commission of these two other felonies failed to satisfy the requirement of proof beyond reasonable doubt that would justify the conviction of accused-appellant. We cite the relevant portions of her testimony, as follows:

"Q: That evening of August 25, 1994, were you ever awakened?
A: No, sir.

Q: You slept the whole night of August 25, 1994?
A: No, sir, because on August 25, 1994, something happened.

Q: What was it that happened?
A: Papa did the same thing to me.

x x x x x x x x x

Q: What did your father really do to you?
A: He again used me.

Q: How many times did your father use you that evening of August 25, 1994?

A: Two times.

Q: About what time was that when your father had sexual intercourse with you?
A: About 3:00 o'clock early in the morning of August 25.

x x x x x x x x x

(Court)
Q: That 7:00 o'clock of August 25, what did your father do exactly?
A: He did the same thing.

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[24] *People vs. Guardian*, G.R. No. 142900, August 7, 2002.

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(Fiscal)
Q: What is that 7:00 o'clock of August 25, evening or morning?
A: Evening."[25]

Thus, when asked what occurred on the evening of August 25, 1994, Mylene merely replied that her father "did the same thing" to her.[26] When prodded to specify the acts done to her, she stated that her father "used her". No other detail was evoked from her to show the attendant elements that constitute rape, the crime charged. Such bare statements cannot suffice to establish accused-appellant's guilt with the required quantum of evidence.

Worse, the prosecution utterly neglected to propound questions to prove that accused-appellant indeed raped the victim in the early morning of August 25, 1994. It is essential on the part of the prosecution to establish, by the necessary quantum of proof, the elements of rape for each indictment.[27]

In Criminal Case No. 1967, the prosecution based its charge on Mylene's claim that her father succeeded in having carnal knowledge of her on August 26, 1994, at 3:00 o'clock in the morning. On the witness stand, Mylene merely testified thus:

"Q: What happened next after that assault of 7:00 in the evening of August 25, 1994?
A: Early morning of August 26 about 3:00 in the morning.
Q: Early morning of August 26, this time what did your father actually do to you?
A: He again inserted his penis inside my vagina."[28]

Again, we find such single statement to be inadequate. The prosecution should have conducted a further inquiry as to the circumstances surrounding the victim's response. We reiterate that each and every charge of rape is a separate and distinct

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[25] *Id.*, pp. 18–19.

[26] TSN, December 5, 1994, p. 19.

[27] *People vs. Supnad*, 362 SCRA 346, 359 (2001).

[28] TSN, December 5, 1994, pp. 19–20.

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crime so that each of the other rape charged should be proved beyond reasonable doubt.[29]

From the foregoing findings, accused-appellant can only be convicted of one count of rape against Mylene Marahay, that which has been duly alleged and proved.[30]

We now examine Criminal Case No. 1964. The information alleges that on August 24, 1994, accused-appellant kissed and inserted his finger into the vagina of his daughter Belinda. Thereafter, he had sexual intercourse with her against her will and consent.

Belinda's testimony says it all, thus:

"Q: What happened, if any, in the evening of August 24, 1994, at about 7:00 o'clock in the evening?
A: I was awakened that he was already on top of me. (witness is crying while testifying)

Q: Who was on top of you?
A: Papa.

Q: When he was on top of you, what was he doing, if any?
A: He had his penis out.

Q: Why, what was he wearing on that time?
A: He was wearing a long pants during the daytime and on the evening he wore short pants.

Q: What did he do when his penis was out?
A: He placed his penis in my vagina.

x x x x x x x x x

Q: What were you wearing at that time?
A: I was wearing a house dress known as *duster*.

Q: What others?
A: Short pants.

Q: Underwears?
A: Yes, sir.

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[29] *People vs. Baring Jr.*, G.R. No. 137933, January 28, 2002.

[30] In Criminal Case No. 1968.

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Q: You were only wearing a *duster* over your short pants? Only those?
A: Yes, sir.

Q: You were wearing panty?
A: I had.

Q: What happened to your short pants and your panty when your father was on top of you?
A: They were taken off towards my feet.

Q: Can you tell us why is it that your short pants and panty were already towards your feet?
A: Because he (Papa) took them off.

Q: How did he take them off?
A: He used his hands to take them off up to my knees only and from my knees he used his foot already in taking them off.

x x x x x x x x x

Q: What did you do, if any, when your short pants and panty were taken off by your father?
A: I went on crying because I could not do anything.

(Court)
Q: Why were you crying since your hands were free to do anything?
A: I went on struggling but I could not do anything because he was stronger than me and he warned that he will kill us.

Proceed

(Fiscal)
Q: You made mention that at the time when he took out his penis and placed it into your vagina, what else did he do, if any?
A: He inserted his penis in my vagina but only a little as he could not penetrate it because I went on crying so he only inserted his finger.

(Court)
Q: What do you mean by that when you said he used his finger?
A: This one. (witness indicating her pointing finger)

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Q: Did you see him using his pointing finger being inserted your vagina?
A: Yes, sir

Q: You could see that when in fact it was very dark because it's night time?
A: But I could see it clearly.

Proceed.

(Fiscal)
Q: Considering that it's night time, how could you say that it was clear to you?
A: The moon was bright at that time.

Q: Yes, there was moonlight but considering that it's night time of course all the windows of your house were closed, how could the light penetrate inside your house?
A: Because there are holes.

Q: When the pointing finger of your father was already inside in your vagina, what did he do with it?
A: He did it in a push and pull movement with his finger.

Q: For how long?
A: It did not take a long time because he did it in a forceful manner.

Q: What did you feel when he forcibly inserted his finger in a push and pull movement in your vagina?
A: It was painful.

Q: After that push and pull movement with your father's finger, what did he do next?
A: After the push and pull of his finger he again placed his penis inside my vagina but then I went on crying so he just pulled it out.

(Court)
Q: How did you know that he again inserted his penis in your vagina?
A: Because he pulled down his short pants.

Q: Did he have a brief at that time?
A: Yes, sir.

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(Fiscal)
Q: What did he do with his brief?
A: He did not take off his brief only his short pants and pulled it down and took out his penis outside his brief.

Q: After that what happened next?
A: He placed his penis in my vagina.

Q: How did you feel when he placed his penis in your vagina?
A: I made a backward jerk movement because it was painful.

(Court)
Q: Did you not resist him?
A: I went on struggling but I could not resist because he is stronger than me.

Q: What did you do with your hands?
A: I went on struggling but he made a retort saying, if you tell it to anybody I will kill you all."[31]

From the above-stated testimony, accused-appellant's intention to consummate his carnal desire was clear. When he felt too much resistance from the victim upon insertion of his penis into her vagina, he instead forcefully thrust his finger inside his daughter's vaginal opening. Moments later, he penetrated her again with his male organ and she cried in extreme pain as he pierced through her womanhood.

We give credence to Belinda's consistent, trustworthy and candid testimony. It is sufficient to warrant a judgment of conviction.[32] Since her testimony meets the test of credibility, the accused-appellant may be convicted on the basis thereof.[33]

Thus, insofar as Belinda is concerned, accused-appellant is liable for one count of rape committed on August 24, 1994.

Article 335 of the Revised Penal Code, as amended by R.A. No. 7659, penalizes the crime of rape, as follows:

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[31] TSN, December 5, 1994, pp. 5–9.

[32] *People vs. Fuensalida,* 281 SCRA 452, 460–461 (1997).

[33] *People vs. Briones*, G.R. No. 140640, October 15, 2002.

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"The crime of rape shall be punished by *reclusion perpetua.*

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"The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

1. when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

x x x x x x x x x"

We have previously declared that the special circumstances introduced by RA No. 7659, including the above-mentioned circumstance, that sanction the automatic imposition of the death penalty, partake of the nature of qualifying circumstances. These circumstances increase the penalty for rape by one degree. [34] However, both the circumstances of minority and relationship must be alleged in the information and proven during trial to warrant the imposition of the death penalty.[35]

While the father-daughter relationship of accused-appellant and the victims, Mylene and Belinda, remains undisputed, the minority of the victims, though alleged, was not satisfactorily established. It is the burden of the prosecution to prove with certainty the fact that the victim was below 18 years of age when the rape was committed in order to justify the imposition of the death penalty.[36]

In the recent case of *People vs. Manuel Pruna y Ramirez or Erman Pruna y Ramirez*,[37] this Court laid down the following guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance:

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[34] *People vs. Narido*, 316 SCRA 131, 150 (1999).

[35] *People vs. Bataller*, 361 SCRA 302, 323 (2001); *People vs. Lomibao*, 337 SCRA 211, 225 (2000).

[36] *People vs. Maglente*, 306 SCRA 546, 577 (1999).

[37] G.R. No. 138471, October 10, 2002.

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"1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.

"2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.

"3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:

a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;

b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;

c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

"4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.

"5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.

"6. The trial court should always make a categorical finding as to the age of the victim."

Thus, although the defense does not contest the age of the victim, it is still essential that the prosecution present independent proof thereof, pursuant to No. 5 of said guidelines. As a matter of fact, the minority of the victim must be proved with equal

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certainty and clearness as the crime itself.[38] Under Section 44, Rule 130 of the Rules on Evidence, a birth certificate is the best evidence of a person's date of birth.[39] In the instant case, the prosecution did not present the certificates of live birth of both Mylene and Belinda or other similar authentic documents to prove their ages. Not even the victims' mother or the victims themselves, or any other relative qualified to testify on matters respecting pedigree, were presented by the prosecution to establish the victims' ages at the time the crimes were committed. Such failure of the prosecution to discharge its burden constrains this Court to hold that the qualifying circumstance of minority cannot be appreciated in these cases.

In sum, accused-appellant should only be convicted of two counts of simple rape. The penalty for each count should only be *reclusion perpetua*, not death.[40]

As to damages, it must be stressed that moral damages are awarded in rape cases without need of proof other than the fact of the rape itself because it is assumed that the victim has suffered moral injuries entitling her to such an award.[41] We find the trial court's award of ₱50,000.00 as moral damages to each victim in each case to be in order.

The trial court erred in not awarding civil indemnity to the victims in each case, the same being mandatory upon the finding of the fact of rape.[42] This Court awards each of the victims the sum of ₱50,000.00 as civil indemnity.

The trial court awarded ₱30,000.00 as exemplary damages. In line with our ruling in *People vs. Catubig*,[43] wherein the

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[38] *People vs. Galeno*, 359 SCRA 180, 198 (2001); *People vs. Javier*, 311 SCRA 122, 141 (1999).

[39] *People vs. Apostol*, 320 SCRA 327, 338 (1999).

[40] Article 335, Revised Penal Code, as amended.

[41] *People vs. Balas*, G.R. No. 138838, December 11, 2001.

[42] *People vs. Villaluna*, 303 SCRA 518, 531–532 (1999); *People vs. Larena*, 309 SCRA 305, 324 (1999).

[43] 363 SCRA 621, 636 (2001).

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exemplary damages of ₱25,000.00 was awarded because the aggravating circumstance of relationship in the commission of rape was duly alleged and established,[44] we reduce the trial court's award to ₱25,000.00.

**WHEREFORE**, the appealed Decision of the RTC, Branch 19, Catarman, Northern Samar, is *MODIFIED* in the following manner:

1. In Criminal Cases Nos. 1965, 1967, and 1969, accused-appellant Carlito Marahay *y* Moraca is *ACQUITTED* on the ground of reasonable doubt.
2. In Criminal Case No. 1968, accused-appellant is found *GUILTY* beyond reasonable doubt of *simple* rape and is sentenced to suffer the penalty of *reclusion perpetua.* He is also ordered to pay the victim, his daughter Mylene Marahay, the amounts of (a) ₱50,000.00 as civil indemnity; (b) ₱50,000.00 as moral damages; and (c) ₱25,000.00 as exemplary damages.
3. In Criminal Case No. 1964, accused-appellant is found *GUILTY* beyond reasonable doubt of *simple* rape and is sentenced to suffer the penalty of *reclusion perpetua.* He is also ordered to pay the victim, his daughter Belinda Marahay, the amounts of (a) ₱50,000.00 as civil indemnity; (b) ₱50,000.00 as moral damages; and (c) ₱25,000.00 as exemplary damages.

Costs *de oficio.*

**SO ORDERED.**

*Davide, Jr., C.J., Bellosillo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr.,* and *Azcuna, JJ.,* concur.

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[44] *People vs. Balas,* G.R. No. 138838, December 11, 2001.